

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2079 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VEDVA VAGRI JANBAI JINABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

#. The petitioner was detasined under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Bhavnagar, on March 4, 1999, in exercise of powers under Section 3(1) of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration 12 registered

offences against the petitioner under Bombay Prohibition Act. The detaining authority also took into consideration statements of 4 anonymous witnesses and came to a subjective satisfaction that the petitioner is a bootlegger and action under PASA Act for detaining the petitioner is necessary to immediately prevent him from pursuing his illegal and antisocial activities. The authority also considered the possibility of resorting to alternative less drastic remedies.

#. The petitioner challenges the order of detention on various grounds. The main ground is that the statements of the anonymous witnesses were recorded on 18th February, 1999, the statements were verified by the detaining authority on 4th March, 1999 and the order came to be passed on 4th March, 1999, detaining the petitioner. Therefore, there was no sufficient time for the authority to arrive at a subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. Another ground that is raised is that the verification by the detaining authority is only one word verification and lastly, it is contended that the copies supplied are illegible.

#. The respondents have not filed any affidavit in reply.

#. Ms. Subhadra Patel has pressed into service the above grounds only and she submitted that the order is bad.

#. Mr. H.H. Patel, learned Assistant Government Pleader has opposed this petition. He submitted that simply because the statements are verified and the order is passed on the same day, it would not amount to non-application of mind.

#. In view of the rival side contentions, it requires to be determined as to whether the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) can be said to be genuine.

7.1 The statements were verified on 4th March, 1999 and the order of detention came to be passed on 4th March, 1999, detaining the petitioner. There was no time lag between these two events which could have made possible for the detaining authority to arrive at a genuine subjective satisfaction for exercise of powers under Section 9(2) of the PASA Act. The powers under Section 9(2) of the PASA Act are required to be exercised

in public interest and for that purpose, the authority has to satisfy itself that the incidents narrated by the anonymous witnesses are correct and the fear expressed by these witnesses qua the petitioner is genuine and, therefore, it is necessary to exercise the powers under Section 9(2) of the PASA Act. This will have a bearing not only on the question of public interest, but also on the right of the detenu of making an effective representation which is guaranteed by the Constitution. Any error or lapse found in exercise of such power would render the order detention bad in law. The subjective satisfaction required to be recorded by the detaining authority is not by way of an empty formality and the authority has to take steps apart from interrogating the witnesses to satisfy itself that the incidents narrated by the witnesses and the fear expressed by the witnesses are correct and genuine. If the verification is on 4th March, 1999 and the order is passed on 4th March, 1999, there was no reasonable time lag between these two dates which would enable the detaining authority to undertake this exercise. In this regard decision of this High Court in case of Kalidas Chandubhai Kahar v. State of Gujarat [1993 (2) GLR 1659] may be referred where facts were quite similar.

#. At this stage, Ms. Patel states that she does not press for the other grounds raised by her regarding illegible documents and one word verification by the detaining authority.

#. In view of the above, the petition deserves to be allowed and is allowed. The order of detention dated 4th March, 1999, in respect of the petitioner-Vedva Vaghri Janabi Jinabhai is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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